



BEFORE THE STATE BOARD OF EQUALIZATION
OF THE STATE OF CALIFORNIA

In the Matter of the Appeal of)
) No. 82R-1121
WITOLD J. AND MARIA DEBSKI)

For Appellants: Allen C. Clarke
Attorney at Law

For Respondent: Jon Jensen
Counsel

O P I N I O N

This appeal is made pursuant to section 19057, subdivision (a), 1 of the Revenue and Taxation Code from the action of the Franchise Tax Board in denying the claim of **Witold J. and Maria Debski** for refund of personal income tax in the amount of \$5,374 for the year 1980.

I/ Unless otherwise specified, all section references **are** to sections of the Revenue and Taxation Code as in effect for the year in issue.

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The sole issue presented by this appeal is whether appellants were residents **of** California during the 1980 tax year.

From 1969 through 1978, **Mr. Debski**, hereinafter referred to as "appellant," was employed as a project manager with an architectural firm in Fullerton, California. In January of 1979, appellant accepted a job **with** Holmes and Narver, an international engineering and construction firm headquartered in Orange, California. **Mr. Debski's** initial responsibilities were centered in this state; however, **in** December of 1979, he was transferred to Saudi Arabia to become the director of facilities planning at one of Holmes and Narver's projects. The initial contract was for a stated period of two years, but in December of 1981, **Mr. Debski** agreed to a one-year extension. Although **Mr. Debski** left for Saudi Arabia in December of 1979, **Mrs. Debski** did not leave for Saudi Arabia until August of 1980, when appellant determined that conditions were safe.

Appellant and his wife owned their residence in Fullerton as well as at least one other single family residence in Brea, California. Both properties were leased out when the **Debskis** left California. When they left, their adult son took care of their Fullerton house and their automobile. A portion of their furniture was left in storage in California. The personal **'items which** were left were put in storage under the names of **Holmes and Narver and were boxed and** ready for shipment to any point in the world at any moment.

Appellants retained several California bank **accounts** so that their son, Peter, could use them in managing the rental properties. Peter **Debski** lives in Fullerton, California, and is an authorized signatory on his parents' accounts.

Mr. Debski had a valid California driver's license during the period in issue. However, the license was renewed under an automatic renewal program. **Mrs. Debski's** driver's license expired in August of 1982.

Appellants did not use a California mailing address. Rather, all mail was **sent through** New York to their Saudi Arabia address. The **Debskis** also were not registered voters in the state of California.

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The **Debskis** returned to California only once to visit their son before they returned to California in December of 1982.

The **Debskis** filed a joint resident California tax return for 1980, but subsequently amended this return, asserting that they were not California residents during 1980. A refund was claimed of all tax paid on **non-**California source income. Respondent denied the claim for refund holding that the **Debskis** remained residents of California. Appellants contend that they were not residents of California and that they maintained ownership of the real property for investment purposes only. The automobile was registered in California for their **son's** convenience and Mr. **Debski's** driver's license. was **renewed** automatically under California law.

Section 17041 imposes a tax on the entire taxable income of every resident of this state- Therefore, the income earned by appellants while absent from California is **taxable** if they remained California residents during that absence. Initially, we note that Mrs. **Debski** did not leave California for Saudi Arabia until seven months after her husband. Clearly, her income was taxable by this state at least until her departure in August of 1980 **as** she remained a resident of California.

Subdivision (a) of section 17014 provides that the term "resident" includes: "[e]very individual domiciled in this state who is outside the state for a temporary or transitory purpose." Under the terms of this statute, appellants were residents of California for tax purposes if (1) they continued to be domiciliaries during their absence, and (2) their absence was for a temporary or transitory purpose. Since appellants do not contend that they did not remain California domiciliaries during their absence, we need only determine whether or not their absence from California was for a temporary or transitory purpose. Respondent's regulation explains that whether a taxpayer's purpose in entering or leaving California is temporary or transitory in character is essentially a question of fact to be determined by examining all the circumstances of each particular case. (Appeal of Anthony V. and Beverly Zupanovich, Cal. St. Bd. of Equal., Jan. 6, 1976.) The regulation further explains that the underlying theory of California's definition of "resident" is that the state with which a person has the closest connections is the state of his residence. (Cal. Admin. Code, tit. 18, reg. 17014.) In accordance with this regulation, we have held that the

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connections which a taxpayer maintains with this and other states are an **important** indication of whether his presence in or absence from California is temporary or transitory in character. (Appeal of Richards L. and Kathleen K. Hardman, Cal. St. Bd. of Equal., Aug. 19, 1975.) Some of the contacts we have considered relevant are the maintenance of a family home, bank accounts, and business relationships; possession of a local driver's license; and ownership of real property. These contacts are important both as a measure of the benefits and protections which the taxpayer has received from the laws and government of California., and also as an objective indication of whether the **taxpayer entered** or left the state for temporary or transitory purposes,

In this case, Mr. **Debski** was employed under a contract which was to last at least two years and which was, in fact, extended for one extra year. When the **Debskis** left California, they took most of their personal **effects** with them and had all the remaining items boxed and stored in a condition where they could be shipped at any time. They leased out their home and had their son manage their properties. Although the **Debskis** did maintain bank accounts in California, those were used to handle the expenses related to the rental property. They returned to California only once during their three-year absence and that was to visit their son who lived in Fullerton. They did not vote in this state or keep a California mailing address. Rather, the facts indicate that the **Debskis** retained relatively few ties with California. When Mr. **Debski** accepted the assignment to Saudi Arabia, he expected it to last for a substantial period of time. Their house was rented and their furniture was either in Saudi Arabia or in storage. It cannot be concluded that appellants kept their California property in such a state of readiness that it would appear that they expected to return to California after only a relatively short absence. While there is evidence that the **Debskis** kept some contacts with California, these contacts are not enough to support a **finding** that appellants were outside of California **for a** temporary or transitory purpose. The action of respondent should, therefore, be modified so as to reflect that Mr. **Debski** was not a resident of California during the period December 1979 through December 1982, and that Mrs. **Debski** was not a resident of California during the period August 1980 through December 1982.

[illegible]

Pursuant to the views expressed in the opinion of the board on file in this proceeding, and good cause appearing therefor,

IT IS HEREBY ORDERED, ADJUDGED AND DECREED, pursuant to section 19060 of the Revenue and Taxation Code, that the action of the Franchise Tax Board in denying the claim of **Witold J. and Maria Debski** for refund of personal income tax in the amount of **\$5,374** for the year 1980, be and the same is hereby modified in accordance with this opinion.

Done at Sacramento, California, **this 10th** day of September, 1985, by the State Board of Equalization, with Board Members Mr. Dronenburg, Mr. Nevins and Mr. Harvey present.

Ernest J. Dronenburg, Jr., Chairman

Richard Nevins, Member

Walter Harvey*, Member

, Member

, Member

*For Kenneth Cory, per Government Code section 7.9